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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/660,665	09/13/2000	Donald J. McMichael	BAL-8/BA00169	6990
22827	7590	03/24/2004	EXAMINER MAIORINO, ROZ	
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			ART UNIT 3763	

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/660,665

Applicant(s)

MCMICHAEL, DONALD J.

Examiner

Roz Maiorino

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claim1-2, 10-11, 13-15, 18-22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S Patent No.5267983 to Oilschlager et al.

Oilschlager teaches an adapter body 14 contains at least a first port 26 configures for reserving a distal connector 10, the first port having at least one arcuate sidewall (portion above 18) for frictionally engaging the distal connector to sealing secure the dials connector to the adaptor body; a tube extending between the first port and what maybe used as a medical feeding device 16. The first port further includes a cylindrical section disposed proximally of the first arcuate sidewall and second arcuate sidewall. The first port also includes a third arcuate sidewall distal of the second arcuate sidewall. The first, second, and third section form a distally extending channel have an increasingly smaller diameter. The deeding adapter further comprises a second port configuration for injection of medication there through in to the tube. (Figures 2 and 4)

Art Unit: 3763

2. Claim 1-2, 10-11, 13-15, 18-22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,399,173 to Parks et al.

Parks teaches an adapter body 160 contains at least a first port 104 configured for receiving a distal connector, the first port having at least one arcuate sidewall 82 for frictionally engaging the distal connector to sealingly secure the distal connector to the adapter body; a tube extending between the first port and what may be used as a medical feeding device. The first port further includes a cylindrical section disposed proximally of the first arcuate sidewall and second arcuate sidewall 84. The first port also includes a third arcuate sidewall 86 distal of the second arcuate sidewall 84. The first, second, and third sections form a distally extending channel having an increasingly smaller diameter. The feeding adapter further comprises a second port configuration for injection of medication there through into the tube. (Figures 7, 8, 12)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 3-9, 12, 16-17, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,267,983 to Oilschlager et al.

Art Unit: 3763

As mentioned above Oilschlager teaches an adapter body 12 contains at least a first port 42 configured for receiving a distal connector, the first port having at least one arcuate sidewall 12e for frictionally engaging the distal connector to sealingly secure the distal connector to the adaptor body; a tube 18 extending between the first port 42 and the medical feeding device. The first port further includes a cylindrical section disposed proximally of the first arcuate sidewall 12e and second arcuate sidewall 12d. The first port also includes a third arcuate sidewall 12c distal of the second arcuate sidewall 12d. The first, second, and third section form a distally extending channel having an increasingly smaller diameter. It has at least one arcuate sidewall with a radius between of about 0.18 inches to 0.55 inches. (Col.3, lines 15-30)

Oilschlager does not teach the first arcuate sidewall with a radius of between about 0.45 inches to 0.55 inches.

In re of Rose, 220 F.2d 459, 463, 105 USPQ 237, 240 (CCPA 1955) it would have been obvious to one having ordinary skill in the art to have changed the size of the sidewalls to a larger size to allow for a larger feeding device connection and hence it would increase the application use and function of Oilschlager's device.

Response to Arguments

4. Applicant's arguments filed 12-22-2003 have been fully considered but they are not persuasive.

a. Applicant argues that Oilschlager does not teach an adaptor body made of a flexible material. According to MPEP § 2112.02 : "[E]ven though product-by-process claims are limited by and defined by the process, determination of

Art Unit: 3763

patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.”

In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted) (Claim was directed to a novolac color developer. The process of making the developer was allowed. The difference between the inventive process and the prior art was the addition of metal oxide and carboxylic acid as separate ingredients instead of adding the more expensive pre-reacted metal carboxylate. The product-by-process claim was rejected because the end product, in both the prior art and the allowed process, ends up containing metal carboxylate. The fact that the metal carboxylate is not directly added, but is instead produced in-situ does not change the end product.).

b. Furthermore, the term flexible does not limit the claim, a pen has a certain level of flexibility so does Oilschlager’s adaptor.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3763


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roz Maiorino whose telephone number is 703-305-2336. The examiner can normally be reached on 8:30am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RM


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